

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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| DENVIL COSBY, as administrator of | * | |
| the estate of LAURA L. COSBY, | * | |
| | * | |
| Petitioner, | * | Case No. 99-501V |
| | * | Special Master Christian Moran |
| | * | |
| v. | * | |
| | * | Filed: February 20, 2009 |
| SECRETARY OF HEALTH AND | * | |
| HUMAN SERVICES, | * | |
| | * | Ruling on the record, |
| | * | entitlement, hepatitis B, |
| Respondent. | * | fibromyalgia. |
| ***** | | |

UNPUBLISHED DECISION¹

On July 26, 1999, Ms. Cosby filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Program”). Ms. Cosby alleged that a series of hepatitis B vaccinations that she received on October 7, 1990, November 7, 1990 and April 8, 1991, caused her to suffer from fibromyalgia and various other conditions. The information in the record, however, does not show entitlement to an award under the Program.

To receive compensation under the Program, a petitioner must prove either: 1) she suffered a “Table Injury” - i.e., an injury falling within the Vaccine Injury Table – corresponding to one of the vaccinations in question, or 2) that any of her medical problems were actually caused by the vaccine. See 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the filed medical records, however, did not uncover any evidence that Ms. Cosby

¹Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

suffered a “Table Injury.” Furthermore, the records do not contain a medical expert’s opinion indicating that any of Ms. Cosby’s problems were related to the vaccine in question.

Under the statute, a petitioner may not be given a Program award based solely on the petitioner’s claims alone. Rather, the petition must be supported by either the medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1). Here, because the medical records do not seem to support the petitioner’s claims, a medical opinion must be offered in support. Petitioner, however, offered no such opinion.

Sadly, Ms. Cosby passed away on January 13, 2006. Her father, Denvil Cosby, was appointed administrator of Ms. Cosby’s estate and became the petitioner in this case. Recently, Mr. Cosby also passed away. In a motion filed on December 8, 2008, petitioner’s counsel requested a ruling on the record as it now stands, and acknowledged that petitioner “cannot find an expert to support causation in her case.” The court hereby grants petitioner’s motion for ruling on the record and makes its decision based on the written filings. Vaccine Rule 8(d).

Under the law, compensation may only be awarded when a medical condition either falls within one of the “Table Injury” categories, or is shown by competent medical opinion to be vaccine-caused. No such proof exists in the record. Accordingly, it is clear from the record that Ms. Cosby has failed to demonstrate either that she suffered a “Table Injury” or that her condition was “actually caused” by a vaccination.

Therefore, the only alternative remains is to DENY this petition. In the absence of a motion for review, the clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master